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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,543	01/12/2001	Walter Horburger	HF-54	1176

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 02/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/759,543

Applicant(s)
Hörburger et al.

Examiner
Gail Verbitsky

Art Unit
2859



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-5 is/are pending in the application

4a) Of the above, claim(s) _____ is/are withdrawn from consideration

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-5 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirements

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3(1PG)

20) ☐ Other:

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DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "at least one bubble level" and the "bubble levels" must be shown or the feature(s) canceled from the claim(s) 1 and 4. No new matter should be entered.

Claim Objections

3. Claims 2-3 are objected to because of the following informalities:
Claim 2: --a-- should be inserted before "synthetic" in line 2 for a proper antecedent basis,
Claim 3: "the bubble levels" in line 2 lacks antecedent basis, because only one bubble level has been positively claimed in claim 1 which claim 3 is dependent on. Appropriate correction is required.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goss et al. (U.S. 5749152) [hereinafter Goss] in view of Smith et al. (U.S. 3848417) [hereinafter Smith].

Goss discloses in Fig. 2 a spirit level comprising a bubble level (vial) 10, a bubble 46, a recess and a housing (level body) 54.

Goss does not explicitly disclose the particular material to make the level body.

Smith teaches that a float (level) can be made of a foamed aluminum (col. 8, line 32).

Therefore, it would have been obvious to one of ordinary skill to make the level disclosed by Goss of a foamed aluminum, as taught by Smith, so as to have a lightweighted and corrosion free device.

6. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goss and Smith as applied to claims 1-2 above, and further in view of Hettinga (U.S. 4125490).

Goss and Smith disclose a device as stated above in paragraph 5.

They do not disclose a coating made of a synthetic material which is less porous than a foamed (porous) metal as stated in claims 3 and 5.

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Hettinga discloses a level frame (outer surface) made of a smooth non-porous skin (coating) while the inside is made of a foamed material (col. 6, lines 48-49).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a non-porous (less porous) coating, as taught by Hettinga, to the device disclosed by Goss and Smith, so as to protect the porous inside from contamination and moisture in order to maintain the required accuracy of the device.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goss and Smith as applied to claims 1-2 above, and further in view of Provi (U.S. 3889353).

Goss and Smith disclose a device as stated above in paragraph 5.

They do not disclose recesses (plurality) in the level body.

Provi discloses in Fig. 1 recesses for vials (bubbles) 48.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Goss and Smith, so as to have two recesses for bubbles, as taught by Provi, in order to provide the user with more accurate level indication.

Information Disclosure Statement

8. The information disclosure statement filed on January 12, 2001 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance of documents

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4101630 and 4018360, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices.

10. Any inquiry concerning this communication should be directed to Examiner Verbitsky who can be reached at (703) 306-5473, Monday through Friday, 7:30 to 4:00 ET.

Any inquiry of general nature should be directed to the Group receptionist whose telephone number is (703) 308-0956.

GKV

January 23, 2002



Diego Gutierrez

Supervisory Patent Examiner

TC 2800